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5 Attorneys for Plaintiff

6 ARIEL COHEN, D.O.

7

8 IN THE UNITED STATES DISTRICT COURT

9 FOR THE STATE OF ARIZONA

10 ARIEL COHEN, D.O., an) Civil Action No.
11 individual)
12)
13 Plaintiff,) COMPLAINT FOR DAMAGES
14) JURY TRIAL DEMANDED
15 v.)
16 ENVISION PHYSICIAN)
17 SERVICES OF ARIZONA LLC, a)
18 corporation, PATRICK NICHOLS,)
19 D.O. an individual, and JOHN)
20 DOES 1-10)
21)
22 Defendants .

23 Plaintiff ARIEL COHEN (herein as “COHEN” or “Plaintiff), by and through
24 her attorneys, Lowell W. Finson, of the Finson Law Firm, for her Complaint against
25 Defendants , Envision Physician Services of Arizona LLC, a corporation, (herein
26 “Defendant EPS” or “EPS”), Patrick Nichols, D.O., is an individual physician (herein
27 “Defendant Nichols”) and John Does 1-10 (hereinafter referred to collectively as
28 “Defendants” aver as follows:
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33 **COMPLAINT FOR DAMAGES**

NATURE OF THE CASE

1. Defendants wrongfully terminated Plaintiff, as well as subjected her to discrimination based upon sex, age and disability, and harassed and retaliated against Plaintiff, and the actions created a hostile work environment, all of which occurred in Yuma County, Arizona.

PARTIES

2. Plaintiff was, at all relevant times, an individual citizen and resident of San Diego, California and was a female employee of Defendants , and was treated as if she had a disability, i.e., autism or personality disorder, and as a direct result of these classifications, was the victim of discrimination, retaliation and harassment, which created a hostile work environment.

3. Defendant is an out of state business entity, and upon information and belief, has its principal place of business in Phoenix, Arizona, and is a healthcare provider.

4. Defendant Patrick Nichols D.O. is a licensed osteopathic physician and is an employee of Defendant EPS, and was Plaintiff's immediate supervisor at the Yuma Regional Hospital in Yuma, Arizona.

5. Plaintiff is informed and believes, and based thereon alleges, that Defendants, DOES 1- 10, and each of them, were, at all times herein mentioned, residents of the State of Arizona and were managers, officers, supervisors, managing agents and/or employees of Defendant EPS and each of them, having the actual or apparent

COMPLAINT FOR DAMAGES

1 authority to participate in or recommend decisions affecting the Plaintiff's job benefits
2 and employment status.
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4 6. The true names or capacities, whether individual, corporate, associate, or
5 otherwise of Defendants , DOES 1-10, inclusive, are unknown to Plaintiff, and
6 therefore, Plaintiff sues these Defendants by such fictitious names. Plaintiff will
7 amend this complaint to allege their true names and capacities when ascertained.
8 Plaintiff is informed and believes, and based thereon alleges, that each of these
9 fictitiously named Defendants is responsible in some manner for the occurrences
10 herein alleged, and that Plaintiff's damages, as herein alleged, were proximately
11 caused by their conduct.
12

13 7. Plaintiff is informed and believes, and thereon alleges, that at all times
14 mentioned, each of the Defendants , including the fictitiously named Defendants, were
15 the agents and employees of each of the other Defendants, and in doing the things
16 hereinafter alleged, were acting within the scope and course of such agencies and/or
17 employments.
18

19 8. All the within claims are brought pursuant to the applicable labor and
20 discrimination laws in the State of Arizona, as well as applicable Federal Employment
21 Discrimination laws, related to claims of sex and disability discrimination, as well as
22 harassment and retaliation based upon sex and disability discrimination.
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1 9. More specifically, the within claims are brought pursuant to the applicable labor
2 and discrimination laws in the State of Arizona, as well as applicable Federal
3
4 Employment Discrimination laws, related to claims of sex and disability
5 discrimination, as well as harassment and retaliation based upon sex and disability
6 discrimination, namely, The Americans with Disabilities Act and The Arizona
7 Employment Protection Act A.R.S. § 23-1501(AEP), §A.R.S 41- 1463 (ACRD), 42
8 U.S.C., Title VII, Sex Discrimination, and any other specific State or Federal laws
9 which may become relevant as the case progresses.

10 13. 10. Any and all acts constituting sex, disability, retaliation and harassment,
11
14 occurred within 300 days of filing the EEOC charge.

15 16. **JURISDICTION**
17

18 11. At all times mentioned herein, the Parties actions occurred in the State of
19
20 Arizona.

21 12. As this matter has been removed from State Court, based solely upon diversity
22
23 of citizenship, which is not denied, Plaintiff is asserting any pertinent Federal and
24 State causes of action.

25 13. Plaintiff filed a timely EEOC Charge, and was given a right to sue letter, which
26
27 she received on October 30, 2021. This satisfies any administrative requirement to
28 pursue the within claims.

FACTS COMMON TO ALL CAUSES OF ACTION

14. Plaintiff, a Doctor of Osteopathic Medicine, began working for Defendants in Yuma, Arizona as an emergency physician to offer healthcare services to patients at Yuma Regional Hospital in 2019.

15. At the time of Plaintiff's hire, Defendants Employee Handbook specifically prohibited discrimination based upon disability, e.g., autism is a specified disability, and any resultant retaliation or harassment based thereon.

16. The Handbook also prohibited any romantic affairs between supervisors and subordinates.

17. Plaintiff had a long period of satisfactory performance while employed by Defendants .

18. Defendant Nichols was, at all times pertinent, an employee of Defendant EPS, and was a Doctor of Osteopathic Medicine.

19. Plaintiff began experiencing discriminatory behavior after Defendant Nichols became Director in August 2020.

20. All relevant acts constituting discriminatory behavior and resulting harassment and retaliation occurred after Defendant Nichols became Director in August 2020.

21 After August 2020, Defendants created a hostile work environment for Plaintiff.

22 On or about October 30, 2020, Defendants treated Plaintiff as if she had a

mental disability, i.e., autism or personality disorder, which she denied ever having

1 been diagnosed until May 2021, when she notified Defendants, but even so denied
2 having any such disorders which interfered with her ability to do her job.
3

4 23. Plaintiff was informed by a colleague that Defendant Nichols had told others he
5 felt Plaintiff had a mental disability, i.e., autism, and she needed to be terminated as a
6 result of his improper perception.
7

8 24. In October 2020, Plaintiff discovered Defendant Nichols was having an affair
9 with a nurse who he promised favorable employment treatment after she completed her
10 education to become a nurse practitioner, which is specifically prohibited by
11 Defendants' Handbook.
12

13 25. Plaintiff learned this "subordinate affair" issue from several case managers, as
14 well as a flight medic, that Defendant Nichols had engaged in such behavior with
15 others.
16

17 26. Such an affair is strictly prohibited by the Defendants' Employee Handbook,
18 and Plaintiff refused to accept the quid pro quo behavior was acceptable.
19

20 27. Upon information and belief, other female employees who were subject to
21 Defendant Nichols' sexual advances denied them, and were subject to discrimination.
22

23 28. Plaintiff, as a staff physician, was duty bound to report, and did temporally
24 report such sexual quid pro quo actions to her other supervisors and HR personnel, but
25 she received no indication her report was addressed.
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1 29. Following this report, in November 2020, Defendant Nichols began a pattern of
2 discrimination based upon sex and perceived disability, which continued until Plaintiff
3 was terminated on August 18, 2021, allegedly for having had one patient grievance.
4

5 30. One such incident occurred on April 8, 2021, during a “hand-off” of patient
6 care to Plaintiff, she asked if the patient, a 7-year old who presented with psychotic
7 behavior, needed a certain course of treatment, but before Plaintiff could properly
8 assess the patient, Defendant Nichols cut her off from further inquiry, and publicly
9 accused Plaintiff of indicating the prior physician had given poor care, and did not
10 need to ask any further questions, which intimidated Plaintiff to fear registering further
11 complaints regarding Defendant Nichols’ behavior as harmful to the proper care of the
12 patient.
13

14 31. In 2021, Plaintiff complained to Defendant Nichols that other staff physicians
15 were not documenting minor psychiatric patients’ care, causing a delay in treatment
16 and/or harm to them.
17

18 32. Defendant Nichols did not respond.
19

20 33. Defendant Nichols repeatedly interfered with Plaintiff’s ability to seek
21 background information on other “hand-off” patients.
22

23 34. On another occasion, Defendant Nichols prevented Plaintiff from acquiring the
24 appropriate information, delaying the “hand-off” for 20 minutes after Plaintiff’s shift
25 ended.
26

1 35. In further retaliation and harassment, Plaintiff had documented a consultation
2 with a specialist who reported Plaintiff had failed to obtain said consult.
3

4 36. Plaintiff complained to HR of Defendant Nichols' behavior regarding "hand-
5 off" issues, and the discriminatory and retaliatory behavior worsened.
6

7 37. On June 25, 2021, Defendant Nichols emailed Plaintiff accusing her of failing
8 to follow "Quality Review" procedures, despite her being Quality Review Director,
9 and Plaintiff responded indicating he was mistaken, and offered examples of her
10 proper implementation of said procedure.
11

12 38. Within a day, Plaintiff's other supervisor, Dr. Kole (Defendant Nichols' boss),
13 who was not on the email string, called her and stated that she was being
14 "disrespectful" of Defendant Nichols, and she could be terminated for such behavior.
15

16 39. Plaintiff was told by others in her group that Defendant Nichols had circulated a
17 rumor that Plaintiff was autistic.
18

19 40. Thereafter, Defendant Nichols indicated that all members of Plaintiff's
20 physician group were going to have their hours cut, due to Covid, but he would offer
21 more hours to any member who expressed an interest, but when Plaintiff expressed an
22 interest, she was not offered more hours.
23

24 41. Thereafter, Plaintiff had a minor back injury and was using a heating pad to
25 ease the pain, and Defendant Nichols told Plaintiff's colleagues that Plaintiff was
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1 probably using the heating pad to hide drugs, which was false and caused her further
2 humiliation.
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4 42. One of Plaintiff's roles was to observe quality control, Defendant Nichols was a
5 constant offender of these policies, as he would never respond to staff issues, and such
6 failure was reported as she was required to do.
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8 43. It was common knowledge that Defendant Nichols had a drug and/or alcohol
9 problem, but rather than further drawing his ire, Plaintiff asked a friend to intervene to
10 address his problem.
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12 44. Soon thereafter, Defendant Nichols accused Plaintiff of using drugs, which was
13 false and malicious.
14

15 45. Defendant Nichols repeatedly complained to Plaintiff's colleagues that she was
16 being rude when she questioned patient safety issues, which was untrue.
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18 46. At all times pertinent, Defendant Nichols banned Plaintiff from working with
19 residents, as he felt this was unnecessary, despite the fact that good practice is to have
20 residents assist in treatment and learn from experienced physicians.
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22 47. More particularly, Defendant Nichols repeatedly demeaned Plaintiff by
23 condemning her scrupulous attention to safety, e.g. , refusing to address Plaintiff's
24 ongoing concerns with patient's documentation, staff being lax in safety procedures,
25 failing to properly document procedures, failing to protect staff when signing out
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1 during shift changes, and in other ways failing to act to recognize the general patient
2 and staff problems.
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4 48. On or about April 12, 2021, Plaintiff was placed on a Performance
5 Improvement Plan (PIP), allegedly for being rude to staff and patients.
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7 49. While this was untrue, Plaintiff accepted “constructive criticism” could
8 certainly improve her performance in the eyes of her supervisors, patients and
9 especially Defendant Nichols.
10

11 50. During the PIP, Plaintiff was advised by the Director of Nursing that she was
12 showing great improvement, and would likely be off the PIP according to its terms, 90
13 days, and was, in fact, improving in all issues raised in the PIP.
14

15 51. Upon information and belief, Defendant Nichols received the second highest
16 number of patient complaints, but underwent no PIP.
17

18 52. Many others received far more patient complaints, but upon information and
19 belief, none were subject to a PIP.
20

21 53. One of the elements of the PIP was for Defendant Nichols to assess Plaintiff’s
22 success and to meet with her to aid in any alleged deficiencies, which never occurred.
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24 54. The PIP also called for Plaintiff to reach out to other Defendants’ agents, but
25 her requests for such meetings was repeatedly ignored.
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1 55. While Plaintiff was still on her PIP, she was called by Karen Mercer,
2 Defendants' HR representative to discuss Plaintiff's numerous complaints regarding
3 Defendant Nichols' behavior.

4 56. At that meeting, Plaintiff supported her complaints with the names of victims of
5 sexual harassment, other staff members who slept with Defendant Nichols, case
6 managers who indicated Defendant Nichols had committed HIPAA violations, and that
7 she had received her PIP by email.

8 57. Mercer indicated it was against protocol to send a PIP by email.

9 58. Mercer indicated she would investigate these accusations, and would demand
10 meetings be set by those who had previously refused to adhere to the PIP.

11 59. On May 20, 2021, Plaintiff had her first meeting, and in a very demeaning
12 fashion, she was told she was lacking in communication skills, case reviews and had
13 other problems, all of which she had never been previously coached on, nor been given
14 a chance to challenge.

15 60. At the meeting, Plaintiff understood that Defendant Nichols and his boss, Dr.
16 Kole, would attend, and she was told they refused to attend, but that Defendant Nichols
17 would meet with her to discuss her progress.

18 61. After the meeting, Plaintiff emailed Defendant Nichols to set up meetings
19 regarding the PIP.

62. Following the meeting, Plaintiff was told to reach out to several supervisors, including Defendant Nichols, but all refused to meet with her.

63. Despite numerous efforts to meet with her supervisors, she received no responses until July 5, 2021, but Dr. Kole indicated Plaintiff was not going to survive the PIP as she was being disrespectful, and that is a terminable offense.

64. On July 8, 2021, Plaintiff had a staff meeting, where she was told that Defendant Nichols had interfered with another physician's patient, who complained he was rude, and the physician told Defendant Nichols to stay away from her patients, and he laughed at her.

65. On or about August 18, 2021, Plaintiff was terminated based upon the false accusation that she had been derelict in her duties, but more specifically that she had one patient grievance.

66. Plaintiff repeatedly complained to Defendants that she was subject to discrimination, but nothing was done to alleviate the situation.

67. Plaintiff suffered severe emotional distress, while Defendants continued a pattern of warnings, discipline and pressure, causing Plaintiff to be terminated on or about February 5, 2020.

**COUNT ONE
SEXUAL DISCRIMINATION
TITLE VII, AEP, ACRD**

68. Plaintiff incorporates and adopts paragraphs 1 through 66 above as if fully set

1 forth herein.

2 69. Defendants have discriminated against Plaintiff in the terms and conditions of
3 her employment on the basis of her sex and disability, in violation of the laws of
4 Arizona, as well as Federal laws, and as a result of discrimination, harassment,
5 retaliation and hostile work environment created by the Defendants.

6 70. Plaintiff is a female, with a disability, and as such, is a member of a class of
7 individuals entitled to protection of the laws of Arizona and the United States of
8 America.

9 71. Defendants have engaged in unlawful discrimination and unlawful
10 employment practices including, but not limited to:

11 a. Treating Plaintiff less favorably than similarly situated
12 male employees without a disability, in the terms and
13 conditions of their employment, including, but not limited
14 to, refusing to provide Plaintiff with the rights of her
15 employment, as well as creating a hostile work
16 environment, all of which were necessary to perform her
17 job functions while similarly situated employees were not
18 equally mistreated; and
19 b. Creating a hostile work environment because of Plaintiff's
20 perceived disability, which was severe or pervasive to an
21 extent that it substantially altered the terms and conditions
22 of her employment.

23 72. On information and belief, Plaintiff's sex was the sole or motivating factor in
24 Defendants' treatment of Plaintiff, and but for Plaintiff's sex, and refusal to engage in
25 inappropriate sexual behavior, Defendants would not have engaged in discriminatory
26 conduct toward Plaintiff.

27 73. As a direct result of the hostile work environment, Plaintiff has suffered mental

1 and emotional distress, pain and suffering, anger, depression, anxiety, humiliation and
2 embarrassment.

3 74. By virtue of one, more, or all of the foregoing violations of pertinent laws
4 protecting individuals, entitling Plaintiff to damages, including, but not limited to, all
5 seniority, benefits, front and back pay, and other related harms.

6 75. By virtue of one, or all of the foregoing violations as alleged above, Plaintiff
7 has been damaged and suffered economic harm in the form of, but not limited to, lost
8 wages and benefits, out-of-pocket expenses and monetary loss as well as non-
9 economic damages all of which she is entitled to recover from Defendants plus pre-
10 judgment interest, attorneys' fees and costs.

12 76. The actions of Defendants and Plaintiff's supervisors and managerial
13 employees were done in reckless indifference to Plaintiff's federally and state
14 protected rights, and Plaintiff is therefore entitled to recover punitive damages and
15 exemplary damages.

17 77. Plaintiff has retained the Finson Law Firm Law to represent her in this
18 litigation and has agreed to pay a reasonable fee for the services rendered in the
19 prosecution of this action on his behalf.

21 **COUNT TWO**
22 **DISABILITY DISCRIMINATION**
23 **ADA, AEP, ACRD.**

24 78. The allegations set forth above are re-alleged and incorporated herein by
25 reference except where to do so would be inconsistent with pleading a cause of action
26 for Disability Discrimination.

28 79. At all times herein mentioned, Defendants were aware Plaintiff was perceived
29 as being disabled, i.e, autism, a disability recognized by Defendants as one which may
30 not subject an employee to discrimination, harassment, retaliation or hostile work
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1 environment.

2 80. Plaintiff, a disabled individual, has been subjected to adverse employment
3 actions by Defendants because of her perceived mental condition.

4 81. Said acts and conduct of Defendants, as have been more fully set forth above,
5 have been on the basis of Plaintiff's disability, or on account of the fact that Plaintiff
6 was regarded as disabled, or on account of the fact that Plaintiff has a record of a
7 disability.

8 82. At no time did Defendants engage in any interactive process to accommodate
9 Plaintiff's disabilities.

10 83. The unlawful employment practices on the part of Defendants and each of
11 them, were a substantial factor in causing damages and injuries to Plaintiff as set forth
12 herein.

13 84. Plaintiff was required by statute to file a claim with the EEOC, and Plaintiff
14 filed such a claim in a timely fashion and a right to sue letter, was issued, thus
15 fulfilling Plaintiff's obligation to exhaust administrative remedies.

16 85. As a result of the aforesaid unlawful acts of said Defendants , and each of
17 them, Plaintiff has lost, and will continue to lose, income and benefits in an amount to
18 be proven at time of trial. Plaintiff claims such amount as damages, together with
19 prejudgment interest.

1 86. As a result of the aforesaid unlawful acts of said Defendants, and each of them,
2 Plaintiff was personally humiliated and has become mentally upset, distressed, and
3 intimidated.
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5 87. Plaintiff claims general damages for such mental distress and aggravation in an
6 amount to be proven at time of trial.
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8 88. As a further result of the said acts of said Defendants, and each of them,
9 Plaintiff may be required to employ medical practitioners and physicians to examine,
10 treat, and care for Plaintiff and may incur future medical and incidental expenses,
11 which will be shown according to proof.
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16 **COUNT THREE**
17 **HARASSMENT BASED UPON SEX AND DISABILITY DISCRIMINATION**
18 **ADA, ADEA, ACRD, FMLA**
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20 89. The allegations set forth above are re-alleged and incorporated herein by
21 reference except where to do so would be inconsistent with pleading a cause of action
22 for discrimination.
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25 90. During the period of Plaintiff's employment with Defendants, as alleged above,
26 Defendants violated this Plaintiff's right to be free of discrimination based upon sex
27 and disability.
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30 91. As alleged above, Defendants engaged in a concerted pattern of harassment of
31 a repeated, routine or a generalized nature.
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1 92. Such harassment based on disability and sex were sufficiently severe or
2 pervasive to alter the conditions of the Plaintiff's employment and create a hostile
3 working environment.
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5 93. As alleged above, Defendants engaged in a concerted pattern of harassment of
6 a repeated, routine or a generalized nature, thus creating a hostile working
7 environment.
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12 **COUNT FOUR**
13 **RETALIATION BASED UPON AGE AND DISABILITY DISCRIMINATION**
14 **ADA, ADEA, ACRD, FMLA**
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16 94. The allegations set forth above are re-alleged and incorporated herein by
17 reference except where to do so would be inconsistent with pleading a cause of action
18 for Retaliation.
19

20 95. At all times herein mentioned the above-mentioned laws against
21 discrimination, were in full force and effect and was binding on Defendants and DOES
22 1-10. This section requires Defendants and each of them, to refrain from retaliating
23 against an employee for having engaged in activities, or being a female or disabled,
24 that are protected as set forth above.
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26

27 96. Said retaliatory acts and conduct by Defendants toward Plaintiff did not consist
28 of normal business or personnel management decisions that were necessary to the job
29 performance of Defendant's officers, supervisors or managers, or to the performance
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1 of an officer's, a manager's or a supervisor's job.

2 97. Plaintiff alleges that the aforesaid acts and conduct of Defendants toward
3 Plaintiff constituted significant, adverse employment actions, which were in retaliation
4 for and were motivated by Plaintiff's having engaged in the protected activities,
5 6 damaging her as set forth.

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11 WHEREFORE, Plaintiff seeks judgment against Defendants and DOES 1-10,
12 and each of them, on all Causes of Action, for:

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14 1. All medical expenses, actual, consequential, and incidental losses including but
15 not limited to loss of income and benefits, according to proof, together with
16 prejudgment interest, pursuant to the laws of both California and Arizona;
17
18 2. General damages for emotional distress and mental suffering in a sum
19 according to proof;
20
21 3. Attorneys' fees, pursuant to the laws of Arizona and the United States of
22 America;
23
24 4. Costs of suit; and
25
26 5. Such other and further relief as the Court may deem proper.

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29 DATED: January 25, 2022

/s/ Lowell W. Finson
LOWELL FINSON
Attorney for Plaintiff

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33 COMPLAINT FOR DAMAGES

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3 **DEMAND FOR JURY TRIAL**

4 Plaintiff hereby demands a trial by jury as to all claims so triable.
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7 Respectfully,
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9 DATED: January 25, 2022

/s/ Lowell W. Finson
10 LOWELL FINSON
11 *Attorney for Plaintiff*